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33 **UNITED STATES DISTRICT COURT**
34
NORTHERN DISTRICT OF CALIFORNIA

35
36 FESAITU MARIO, an individual, on his own
37 behalf and on behalf of all others similarly
38 situated,

39 Plaintiff,

40 Case No. 3:17-cv-02099-WHA

41
**AMENDED STIPULATION TO PROCEED
42 TO ARBITRATION**

43
44 SWISSPORT USA, INC., a Delaware
45 corporation, SWISSPORT CARGO SERVICES,
46 L.P., a California limited partnership,

47 Defendants.

1 Pursuant to Civil L.R.s 6-2 and 7-12, Plaintiff Fesaitu Mario (“Plaintiff”), on the one hand,
2 and Defendants Swissport USA, Inc., and Swissport Cargo Services, L.P. (“Defendants”)
3 (Plaintiff and Defendants will be referred to as the “Parties”), by and through their respective
4 attorneys of record, hereby stipulate and request as follows:

5 WHEREAS, Defendants have demanded binding arbitration of Plaintiff’s individual
6 claims;

7 WHEREAS, Plaintiff has decided, pursuant to his arbitration agreement with Swissport
8 Cargo Services, L.P. (“Swissport Cargo”), to arbitrate his individual claims against Defendants;

9 WHEREAS, the Parties agree that nothing herein constitutes a waiver of Defendants’
10 position or argument that Plaintiff has waived his ability to bring class, collective and/or
11 representative claims through his arbitration agreement with Swissport Cargo;

12 WHEREAS, Plaintiff voluntarily agrees to waive any right to pursue class, collective, or
13 representative claims against Defendants;

14 WHEREAS, Plaintiff has not received any consideration in exchange his voluntary waiver
15 of any right to pursue class, collective, or representative claims against Defendants;

16 WHEREAS, Plaintiff seeks dismissal without prejudice of the putative class and collective
17 claims alleged in the Complaint;

18 IT IS HEREBY STIPULATED AND AGREED by the parties that:

- 19 1. Plaintiff’s individual claims against Defendants in this action shall proceed to binding
20 arbitration pursuant to Plaintiff’s arbitration agreement with Swissport Cargo;
- 21 2. Plaintiff waives any right to pursue class, collective, and/or representative claims
22 against Defendants;
- 23 3. The Complaint shall be dismissed in its entirety without prejudice, with the parties to
24 bear their own fees and costs in this litigation; and
- 25 4. Nothing herein constitutes a waiver of Defendants’ position or argument that Plaintiff
26 waived his ability to bring class, collective and/or representative claims through his
27 arbitration agreement with Swissport Cargo.

Dated: November 7, 2017

CONSTANGY, BROOKS, SMITH & PROPHETE, LLP

By: /s/ Sarah K. Hamilton
Sarah K. Hamilton
Attorneys for Defendants
Swissport USA, Inc. and
Swissport Cargo Services, L.P.

Dated: November 7, 2017

BRADLEY GROMBACHER, LLP

By: /s/ Kiley L. Grombacher
Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
Attorneys for Plaintiff Fesaitu Mario

ECF ATTESTATION

I, Sarah K. Hamilton, am the ECF User whose ID and Password are being used to file this document. I attest that concurrence in the filing of this document has been obtained from the signatories.

Dated: November 7, 2017

**CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP**

By: /s/ Sarah K. Hamilton
Sarah K. Hamilton

[PROPOSED] ORDER

PURSUANT TO STIPULATION, AND FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Pursuant to the stipulation of the parties and good cause appearing therefore, the Court hereby Orders:

1. Plaintiff's individual claims to binding arbitration;
 2. The Complaint shall be dismissed in its entirety without prejudice, with the parties to bear their own fees and costs in this litigation;
 3. All further deadlines, hearings and proceedings before this Court shall be moot.

IT IS ORDERED.

DATED: November 8, 2017.


HON. WILLIAM H. ALSUP
U.S. DISTRICT COURT JUDGE